1792.

SUPREME COURT OF THE UNITED STATES,

No. 174.

WILLIAM H. TAYLOE, APPELLANT,

vs.

THE MERCHANTS' FIRE INSURANCE COMPANY OF BALTIMORE.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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J. & G. S. Gideon, Printers.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-seven—

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, honorable Upton S. Heath, judge of Maryland district; William L. Marshall, esquire, attorney; Moreau Forrest, esquire, marshal; Thomas Spicer, clerk—among other were the following proceedings, to wit:

WILLIAM H. TAYLOE
vs.
The MERCHANTS' Fire Insurance Company of Baltimore.

Be it remembered, that heretofore, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and forty-six, the said William H. Tayloe, by Reverdy Johnson and John Glenn, his solicitors, filed in the circuit court here his bill of complaint against the said Merchants' Fire Insurance Company of Baltimore, in the words and of the tenor following, to wit:

Bill.

To the honorable the judges of the circuit court of the United States of America, sitting in chancery, for the Maryland district:

William H. Tayloe, a citizen of the State of Virginia, brings this his bill against the Merchants' Fire Insurance Company of Baltimore, a body corporate, chartered by the State of Maryland, and whose stockholders are citizens of the said State of Maryland. And thereupon your orator complains and says:

That in the month of October or November, eighteen hundred and forty-four, the Merchants' Fire Insurance Company of Baltimore, having previously established at Fredericksburg, in Virginia, an agency for effecting policies of insurance against loss by fire, and having appointed John Minor, esquire, of Fredericksburg, their agent for that purpose, your orator applied to said Minor to have an insurance effected upon the said dwelling-house of said Tayloe, situated in Richmond county, Virginia, to the amount of eight thousand dollars, for one year.

And your orator further states that the said Minor transmitted such application for insurance to the said Insurance Company of Baltimore, who now hold the same, and which your orator requires they may produce and file, with their answer to this bill.

And your orator further states that he was then, and always afterwards continued to be, the proprietor of said dwelling, up to the time of its destruction by fire, as hereinafter stated.

Your orator further states that he, before any answer was given by said defendants to his aforesaid application for insurance, was obliged to depart from home for the State of Alabama, and before his depar-

ture arranged with said Minor that he, said Minor, should transmit by letter the result of said application to your orator, in the said State of Alabama, so soon as the same should be received by him.

And your orator further states that the said defendants agreed to insure said property to the amount aforesaid, and transmitted by letter to said Minor their terms for effecting the same, which letter, or a copy thereof, your orator prays the said defendants may be required to produce. And your orator further states, the said Minor having received from said defendants an answer to said application, addressed to your orator a letter, of which the following is a copy:

"FREDERICKSBURG, *December*, 1844.

MY DEAR SIR: This day I received, from the secretary of the board of the Merchants' Fire Insurance of Baltimore, an answer to your application for insurance to the amount of eight thousand dollars on the Mount Airy house, rate 70 c.

Premium on $8,000 - - - - -	$56
Policy - - - - - -	1
	$57

Should you desire to effect the above insurance send me your check, payable to my order, for fifty-seven dollars, and the business is concluded."

And your orator further states that said letter having been by mistake directed to Demopolis, instead of Macon, Alabama, did not reach your orator for some time after it was so transmitted, but, being sent by the postmaster at Demopolis to Macon, your orator received the same on the twentieth day of December, eighteen hundred and forty-*five*, and on the next day, the twenty-first, your orator, in compliance with the directions in the letter of said Minor, answered the same, accepting the said terms of insurance, and enclosing a check to the order of said Minor, upon the bank in Fredericksburg, for the sum of fifty-seven dollars therein mentioned, expressing it to be for the said insurance, your orator at the time having said amount of money, and much more, in said bank; which letter enclosing said check was, on the same day, mailed at, and despatched from, Macon for Fredericksburg, which letter was, in due course of time, received by said Minor, and which your orator prays said defendant may be required to produce.

And your orator further states, that on the twenty-second day of December of said year, after said check had been mailed at Macon, and had left that place for Mr. Minor at Fredericksburg, the centre building of said house at Mount Airy was consumed by fire.

And your orator further states that the said Minor and said defendants were immediately apprised of said loss by fire, and were required to furnish your orator with a policy of insurance, according to said arrangement already made, or to make good said loss, which said company refused, alleging that they were not responsible therefor, and that the con-

tract between the parties was not so far consummated as to render them liable as insurers.

To the end, therefore, that he may have redress on the premises, and that by a decree of this court the said defendants may be ordered and adjudged to pay to your orator the amount of actual loss which he has sustained, to an amount not exceeding eight thousand dollars, and that he may have such further relief as his case may require: May it please your honors to order that a writ of subpœna may issue, directed to said Merchants' Fire Insurance Company of Baltimore, to be and appear in this court to answer this bill, and to stand to and abide by the decree in the premises; and he will ever pray, &c. R. JOHNSON,
J. GLENN.

Whereupon the writ of the United States of America of subpœna was issued, directed to the said Merchants' Fire Insurance Company of Baltimore, in the words following, to wit:

Subpœna.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] To the Merchants' Fire Insurance Company of Baltimore, greeting:

You are commanded that, all excuses and delays set aside, you be and appear before the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April, instant, to answer unto the bill of complaint of William H. Tayloe, a citizen of the State of Virginia, in the said court exhibited against you. Hereof you are not to fail, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-five. R. J. & J. G.

Issued 2d April, 1846.

THO. SPICER,
Clerk circuit court.

Afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-six, the said Merchants' Fire Insurance Company of Baltimore, by John J. Lloyd, their solicitor, filed in the circuit court here the following order, to wit:

Circuit court of U. S., chancery.

WILLIAM H. TAYLOE
vs.
MERCHANTS' FIRE INSURANCE COMPANY OF BALTIMORE.

Order to enter appearance.

Mr. Spicer, enter my appearance for defendants.

JOHN J. LLOYD.

May 4th, 1846.

Afterwards, to wit, on the eleventh day of September, in the year of our Lord one thousand eight hundred and forty-six, the said Merchants' Fire Insurance Company of Baltimore, by John J. Lloyd, their solicitor, filed in the circuit court here their answer and exhibits to the bill of complaint of the said William H. Tayloe, in the words and of the tenor following, to wit:

Answer.

The answer of the Merchants' Fire Insurance Company of Baltimore to the bill of complaint of William H. Tayloe, in the circuit court of the United States of America, for the district of Maryland, sitting in chancery, exhibited.

This respondent, now and at all times hereafter, saving and reserving to itself all and every manner of advantage and benefit of exception to the manifold errors and imperfections, both in form and substance, in said bill contained, for answer thereunto, nevertheless, answering says:

That it is true, as alleged in said bill, that before the month of October, eighteen hundred and forty-four, this respondent had appointed John Minor, of Fredericksburg, in the State of Virgina, an agent to receive and forward to this respondent proposals for insurance against fire; and this respondent herewith exhibits a copy of the instructions issued by this respondent to the predecessor of said Minor, marked exhibit K, which were duly communicated to said Minor for his government, shewing the extent and nature of his authority as the agent of this respondent; which exhibit it is prayed may be taken as part of this answer

This respondent further states that it is true, that said agent, on the 25th day of November, 1844, for and in behalf of the complainant, communicated to this respondent the proposal shewn by exhibit A, herewith filed; and which, with all other exhibits hereinafter referred to, this respondent prays may be regarded and taken as a part of this answer.

That, on the 30th day of November, 1844, this respondent addressed to said John Minor a letter of instructions, of which exhibit B, herewith filed, is a copy.

That the substance of said letter was communicated, as this respondent was informed and believes, to the complainant, then in Alabama, on the 2d day of December, 1844, from whence no reply was received until the 31st of December, 1844, when a letter was received by said agent, of which exhibit C, herewith filed, is a copy, so far as it related to said insurance.

That, upon the receipt of said last mentioned letter from the complainant, the said John Minor advised him that his acceptance of the terms of insurance proposed by this respondent, came at a period too late to be available, and that the check enclosed in his said letter of the 21st of December, 1844, had not been, and would not be, presented for payment; and said check was therefore cancelled by the said John Minor, by writing across its face "this check is not to be presented."

This respondent further answering, says, that the terms and condi-

tions on which it issued policies of insurance will be shewn by a blank policy herewith filed, marked exhibit D; that said terms and conditions, and the instructions aforesaid, defined the limits within which the agent of this respondent was competent, in its name and behalf, to act in the making of contracts of insurance, and that they were known to said Tayloe, the complainant, when said proposal for insurance was made, as aforesaid, in his behalf.

And this respondent avers, that all policies of insurance against fire, made by it in 1844, and before and since that time, were, and have been, in the form of said blank policy, (exhibit D,) and that all answers made by this respondent to applications for insurance against fire have always been with reference to the terms of said policy, and the printed conditions thereto annexed and accompanying the same; and this respondent avers, that the answer of this respondent to the said application of said complainant of 25th November, 1844, and the offer by this respondent to make insurance of the said property of the complainants, as communicated by the aforesaid letter of instructions to said Minor, marked exhibit B, was made with reference to the terms and printed conditions aforesaid, and except on such terms and conditions this respondent would not, and did not, offer to insure the said complainant.

This respondent, further answering, denies that any contract was at any time made by this respondent with the complainant, touching the dwelling house of the complainant described in exhibit A, or that any premium for the insurance thereof was at any time paid by the said complainant, or received by this respondent, or that said complainant had a right or authority at any time to demand a policy of insurance to be issued by this respondent, or the payment by this respondent of any loss sustained by said complainant from fire, in the dwelling house as aforesaid proposed to be insured.

This respondent further answering admits, that on the 22d day of December, 1844, a fire occurred in the dwelling house of the complainant proposed to be insured, and that information of the occurrence of said fire was communicated to John Minor on the twenty-third day of the same month, and that this respondent had knowledge thereof immediately thereafter, by the letter herewith filed as part of this answer, and marked exhibit E; but said information and communication were given and made, not by the said complainant, or by any agent of his for that purpose authorized, nor with a view to claim for a loss by said fire, but merely to explain why said Charles Tayloe, who gave the information, did not attend to certain matters in person, as by said exhibit E will fully appear; but how the said fire occurred, and what was the extent of the loss sustained thereby, this respondent does not know, nor does this respondent believe it concerns *it* to know.

This respondent denies it to be true, as charged on said bill, that this respondent, or, so far as *it* is informed and believes, that the said John Minor was immediately after said fire, or at any time since, and before filing said bill, required to furnish said complainant with a policy of insurance, nor was any demand made on this respondent for payment of

the loss by said fire, except only that some time in the summer of 1845, the said complainant called at the office of this respondent and spoke of his application for insurance, and the burning of his house; but did not then insist, or seem to suppose, that he had any valid claim against this respondent; after which nothing further was heard by this respondent from said complainant till November or December. 1845, when the letter and certificate herewith exhibited, and marked exhibit F, were received by this respondent, to which this respondent sent a reply of which exhibit G, herewith filed, is a true and correct copy; and that nothing further was heard of said claim till January, 1846, when this respondent received a letter from the counsel of said complainant herewith filed, and marked exhibit H, to which this respondent replied, and a true copy of said reply is herewith filed, marked exhibit I.

This repondent further answering says: That conceding, which is again expressly denied, that there ever did exist a contract of insurance with reference to said dwelling house, this respondent would, nevertheless, be freed from all responsibility on account thereof because of the omission of the complainant to comply with the terms and conditions upon which it was known to the complainant that said contracts were made, and upon which policies of insurance have always been made, and answers to proposals for insurance have always been given by this respondent, and upon which the answer given by this respondent to the proposal of said complainant for insurance in this specific case was made, as well as upon which the said insurance would have been made if the contract has been consummated. And this respondent insists, that if it shall be held that there has been any contract of insurance in this case, that then said contract is binding on both parties thereto, and that said complainant was bound to comply with the seventh printed condition of the policy of insurance, which is as follows:

VII. "It shall be the duty of all persons insured by this company, in case of fire or other danger touching the risk, to do every thing in their power for the safety and protection of the property insured; and it is mutually understood that there can be no abandonment to the insurers of the property insured. And all persons insured by this company, sustaining any loss or damage by fire, are forthwith to give notice to the company, and as soon after as possible to declare in as particular an account of their loss or damage, signed by their own hands, as the nature of the case will admit, and make proof of the same by their oath or affirmation, and by their books of accounts, and other proper vouchers, as shall be reasonably required, and shall make oath whether any and what other insurance is made on the same property, and shall procure a certificate under the hand of a magistrate or notary public, (most contiguous to the spot where the fire happened, and not concerned in such loss,) that they are acquainted with the character and circumstances of the person or persons insured, and do know, or verily believe, that he, she, or they, really, and by misfortune, and without fraud or evil practice, have sustained by such fire loss or damage to the amount therein mentioned, and

until such affidavit and certificates are produced the loss shall not be payable. So, also, if there appear any fraud or false swearing, the claimant shall forfeit his claim to restitution or payment, by virtue of this policy."

And also with all other of said printed conditions; whereas your respondent states, that the said complainant has wholly omitted to comply with the said seventh condition, as well as others of said conditions, and therefore your respondent insists that no contract was entered into at any time by which this respondent insured against fire the dwelling house of the complainant proposed to be insured as is hereinbefore stated; or, if the circumstances connected with the transaction amounted to such contract of insurance, this respondent then maintains, that the complainant, by his omission to comply with the conditions of said insurance, has forfeited and waived all right to claim the benefit thereof.

And this respondent having fully answered the said bill, hereto affixes its corporate seal in evidence of the truth hereof, and prays that it may be hence dismissed with reasonable costs in this behalf sustained; and, as in duty, &c.

JOHN NELSON,
JOHN J. LLOYD,
For Respondents.

ISAAC TYSON, [SEAL.]
President.

STATE OF MARYLAND, *City of Baltimore, to wit:*

On this tenth day of September, one thousand eight hundred and forty-six, before me, John Hanan, commissioner of the circuit court of the United States for the district of Maryland, personally appeared Isaac Tyson, president of the Merchants' Fire Insurance Company of Baltimore, and sincerely and solemnly affirmed, that the matters stated in the foregoing answer are true, to the best of his knowledge and belief.

Affirmed before

JOHN HANAN, *Commissioner.*

Exhibit K, referred to in the answer.

Copy of letter of instructions appointing William M. Blackford, agent of the Merchants' Fire Insurance Company for Fredericksburg, Virginia, and its vicinity. (Letter book A.)

OFFICE OF MERCHANTS' FIRE INS. CO. OF BALTIMORE,
February 20th, 1839.

WILLIAM M. BLACKFORD, Esq.,
Fredericksburg, Virginia.

RESPECTED FRIEND: On the 7th instant, the board of directors of this company appointed thee agent for Fredericksburg, to receive applications for insurance, and to attend to the adjustment of losses as more fully hereafter set forth.

Thy duties as agent will be to receive applications for insurance, and

when practicable to examine the property proposed to be insured. (And in all cases let the applications be signed by the party wishing insurance, and be accompanied by a sketch or ground plan of the premises, together with such observations, confidential or otherwise, as thee may deem proper,) and transmit the same to this office, where they will meet with prompt attention, and answers be returned at what rates of premium the risk will be taken. Upon the receipt of these answers, if the applicant accept at the rates named, thee is authorized to receive the amount charged, and the risk commences on the day the premium is paid, which day thee will always name to the office.

On acceptance of an application, thee will immediately inform the the company of the same, and a policy will forthwith be issued, to date from the day of acceptance, and the amount of the premium and charge for the policy will be charged to the agency where the policy is made out. A similar charge for premium only will be made when policies are renewed.

"No insurance will be considered as made or binding until the premium be actually paid," hence thee will observe no credit can be given for premiums under any circumstances.

Before the expiration of policies, thee will notify the parties insured thereof; *and if the risk remain unchanged in all respects*, and if thee has not been notified by the office of any change in premium, or otherwise, thee is authorized to renew on the same terms and conditions as before, to date from the day of expiration, when thee will receive the amount of renewal premium, (no charge being made for policy, except when first issued,) and give notice to the office of the particular risk renewed, reciting the name, the number of the policy, the amount of premium, and date of expiration of the renewal. If any change whatever has been made in the risk, or is desired to be made, it must have the sanction of the office before renewed.

A monthly statement of the insurances obtained through thee will be expected, and an account current whenever desired by the office; and the amount of premiums received by thee, deducting 10 per cent. for thy commission, will be subject to be drawn for at sight at the option of the company. In the course of business transfers of property are made by sale or otherwise, which, unless done with the consent of the company, render the policy void.

In such cases, where the consent of the office may with propriety be granted, (of which thee must be the judge,) the following endorsement should be made on the policy assigned by thee, as agent for the company, viz:

"The Merchant's Fire Insurance Company of Baltimore hereby consents that the within policy No. , be assigned by the assured to

WILLIAM B., *Agent.*

Fredericksburg, Virginia."

Immediately on such transfer being allowed, thee will inform the office of it, naming the assignee and the No. of the policy. Thee will of course consent to the assignment of no policies, except such as have

been issued on application passing through thy hands. On receiving information of loss by fire on any property within thy agency, thee will inquire whether the loss be within the policy, and whether the policy was fairly obtained. The law as well as morality require that the assured be guilty of no fraud. For particulars in the event of a loss, thy attention is directed to the conditions of the policy. The office can in no event be liable for more than the sum insured. And to estimate the amount of loss, every thing destroyed or injured must be estimated at its fair cash value at the time of the fire, but when articles are damaged they belong to the assured, and the office is liable only for the difference between sound and *damaged*. Old frame buildings are not desirable property for insurance, yet we do not refuse them, but the amount some times asked on them may be more than their cash value. In such cases, thy good judgment and opinion may be prudently communicated to the applicant, as it is the desire of this institution to avoid all dispute and litigation; hence we always prefer that the amounts asked shall not exceed three-fourths of the actual value of the property.

It may not be improper to remark, fires frequently originate from the insecure manner in which stove-pipes pass through wood partitions out of the side of houses, or through windows, without being properly secured, or from other defects. These should be examined. Ashes kept in wooden vessels, or otherwise improperly placed, frequently cause fires; these should be inquired after and removed.

It is always desirable to divide the amount of a risk as far as practicable, that is, to specify a certain sum on the building, on the goods therein, and so on, naming a specific amount on each kind of property offered. It is not desirable to have too much insured in any one block, or immediately contiguous. In all cases much reliance is placed on the integrity and respectability of the applicants.

It would be preposterous, in a general letter of instructions, to attempt the anticipation of all questions that may arise in the progress of business; having mentioned a few leading points, much must be left to the exercise of judgment, on the minor circumstances as they arise, looking always to the interest of the institution founded on liberal and equitable principles.

Thine, truly,

(Signed) ISAAC TYSON, *President.*

Copy of a letter appointing John Minor agent of the Merchants' Fire Insurance Company of Baltimore, for Fredericksburg and its vicinity. (Letter B, folio 310.)

OFFICE MERCHANTS' FIRE INS. CO. OF BALTIMORE,
August 6, 1841.

JOHN MINOR, Esq.,
Fredericksburg, Virginia.

SIR: At a meeting of the board of directors on the 4th instant, you were duly appointed the agent of this company for the town of Freder-

when practicable to examine the property proposed to be insured. (And in all cases let the applications be signed by the party wishing insurance, and be accompanied by a sketch or ground plan of the premises, together with such observations, confidential or otherwise, as thee may deem proper,) and transmit the same to this office, where they will meet with prompt attention, and answers be returned at what rates of premium the risk will be taken. Upon the receipt of these answers, if the applicant accept at the rates named, thee is authorized to receive the amount charged, and the risk commences on the day the premium is paid, which day thee will always name to the office.

On acceptance of an application, thee will immediately inform the the company of the same, and a policy will forthwith be issued, to date from the day of acceptance, and the amount of the premium and charge for the policy will be charged to the agency where the policy is made out. A similar charge for premium only will be made when policies are renewed.

"No insurance will be considered as made or binding until the premium be actually paid," hence thee will observe no credit can be given for premiums under any circumstances.

Before the expiration of policies, thee will notify the parties insured thereof; *and if the risk remain unchanged in all respects*, and if thee has not been notified by the office of any change in premium, or otherwise, thee is authorized to renew on the same terms and conditions as before, to date from the day of expiration, when thee will receive the amount of renewal premium, (no charge being made for policy, except when first issued,) and give notice to the office of the particular risk renewed, reciting the name, the number of the policy, the amount of premium, and date of expiration of the renewal. If any change whatever has been made in the risk, or is desired to be made, it must have the sanction of the office before renewed.

A monthly statement of the insurances obtained through thee will be expected, and an account current whenever desired by the office; and the amount of premiums received by thee, deducting 10 per cent. for thy commission, will be subject to be drawn for at sight at the option of the company. In the course of business transfers of property are made by sale or otherwise, which, unless done with the consent of the company, render the policy void.

In such cases, where the consent of the office may with propriety be granted, (of which thee must be the judge,) the following endorsement should be made on the policy assigned by thee, as agent for the company, viz:

"The Merchant's Fire Insurance Company of Baltimore hereby consents that the within policy No. , be assigned by the assured to

WILLIAM B., *Agent.*

Fredericksburg, Virginia."

Immediately on such transfer being allowed, thee will inform the office of it, naming the assignee and the No. of the policy. Thee will of course consent to the assignment of no policies, except such as have

been issued on application passing through thy hands. On receiving information of loss by fire on any property within thy agency, thee will inquire whether the loss be within the policy, and whether the policy was fairly obtained. The law as well as morality require that the assured be guilty of no fraud. For particulars in the event of a loss, thy attention is directed to the conditions of the policy. The office can in no event be liable for more than the sum insured. And to estimate the amount of loss, every thing destroyed or injured must be estimated at its fair cash value at the time of the fire, but when articles are damaged they belong to the assured, and the office is liable only for the difference between sound and *damaged*. Old frame buildings are not desirable property for insurance, yet we do not refuse them, but the amount some times asked on them may be more than their cash value. In such cases, thy good judgment and opinion may be prudently communicated to the applicant, as it is the desire of this institution to avoid all dispute and litigation; hence we always prefer that the amounts asked shall not exceed three-fourths of the actual value of the property.

It may not be improper to remark, fires frequently originate from the insecure manner in which stove-pipes pass through wood partitions out of the side of houses, or through windows, without being properly secured, or from other defects. These should be examined. Ashes kept in wooden vessels, or otherwise improperly placed, frequently cause fires; these should be inquired after and removed.

It is always desirable to divide the amount of a risk as far as practicable, that is, to specify a certain sum on the building, on the goods therein, and so on, naming a specific amount on each kind of property offered. It is not desirable to have too much insured in any one block, or immediately contiguous. In all cases much reliance is placed on the integrity and respectability of the applicants.

It would be preposterous, in a general letter of instructions, to attempt the anticipation of all questions that may arise in the progress of business; having mentioned a few leading points, much must be left to the exercise of judgment, on the minor circumstances as they arise, looking always to the interest of the institution founded on liberal and equitable principles.

Thine, truly,

(Signed) ISAAC TYSON, *President.*

Copy of a letter appointing John Minor agent of the Merchants' Fire Insurance Company of Baltimore, for Fredericksburg and its vicinity. (Letter B, folio 310.)

OFFICE MERCHANTS' FIRE INS. CO. OF BALTIMORE,
August 6, 1841.

JOHN MINOR, Esq.,
Fredericksburg, Virginia.

SIR: At a meeting of the board of directors on the 4th instant, you were duly appointed the agent of this company for the town of Freder-

icksburg, Virginia, and its vicinity, to enter on the duties of the agency, on the resignation of Mr. Wm. M. Blackford, the present agent, with powers and compensation similar to those now enjoyed by Mr. Blackford; for the particulars of which, I refer you to a letter of instructions, dated February 20, 1839, addressed to Mr. Blackford, and who will hand it over to you, and you will please receive it as if addressed to yourself. Mr. B. will also deliver to you his list of insurances in the agency, which please attend to by giving sufficient notice, before each expiration, to the parties insured. and renew the same when desired, and when no change has been made in the risk. I doubt not that Mr. B. will cheerfully give you all explanations necessary and useful to you; and, trusting that the correspondence thus commenced will be of mutual benefit, I am, yours, respectfully,

(Signed) J. SANNER NORRIS, *Secretary.*

Exhibit A referred to in the answer.

FREDERICKSBURG, VIRGINIA, *November* 25, 1844.

MERCHANTS' FIRE INSURANCE CO. OF BALTIMORE:

The undersigned, William H. Tayloe, desires to effect insurance to the amount of eight thousand dollars on his dwelling-house, of stone covered with wood; main building about ninety by sixty feet, two stories; two wings, two stories, covered with wood, about fifty by fifty feet, and connected with the main building by covered ways of stone, covered with wood. The above mentioned house is known by the name of Mt. Airy, and is situated in Richmond county, about two miles and a half from the court-house.

J. MINOR,
For WILLIAM H. TAYLOE.

FREDERICKSBURG, VA., *November* 25, 1844.

GEORGE B. COALE, ESQ.,
Secretary Merchants' Fire Ins. Co. of Baltimore.

DEAR SIR: This day Arthur H. H. Bernard, executor of William Bernard, of Mansfield, deceased, paid me fifty-seven dollars policy and premium on his dwelling-house, called Mansfield, situated in the county of Spotsylvania, to the amount of eight thousand dollars, as per his application, to begin this day, (25th November, 1844, and end on the 25th of November, 1845,) at noon. Please forward policy to him at this place. The mail of Friday or Saturday next will bring you my account for the month.

Your obedient servant,

J. MINOR, *Agent.*

P. S. Mr. Tayloe (not Mr. Taylor) passed through this place this morning on his way to Alabama, and not having time to attend to his application, desired me to forward one in his name. The measures given are as nearly correct as I can remember; but, as the building is worth double the amount proposed, the measures are not of much importance. I have long been familiarly acquainted with the house. One

thing I should state, that it is built of red sand stone, which in my opinion will not stand fire. Mr. Tayloe's family inhabits the house, and he will return in January or February; meanwhile I am to communicate to him your answer.

J. MINOR.

(Copy.) *Exhibit B, referred to in the answer.*

M. F. I. Co., BALTIMORE, *November* 30, 1844.

J. MINOR, ESQ.,

DEAR SIR: Yours of 25th and account of 28th are received. I have forwarded Mr. B's policy. Mr. Tayloe's risk will be taken at the same rate as Mr. Bernard's, viz., 70 cts. on $8,000 p. $56. Policy $1.

Yours, respectfully,

GEO. B. COALE, *Secretary.*

Exhibit C, referred to in the answer.

MACON, MARENGO COUNTY, ALA.
21*st Decr.*, 1844.

DEAR MINOR: Yours of the 2d came to hand yesterday, and I send you my check for fifty-seven dollars, as the premium of insurance on Mount Airy house. You will please deposite the policy in the Bank of Virginia, in your town, &c., &c.

Mem. endorsed, "mem. rec'd December 31st, 1844.

Exhibit D, referred to in the answer.

Merchants' Fire Insurance Company of Baltimore, incorporated with a capital of $300,000.

$ No.

This instrument, or policy of insurance, witnesseth, that the Merchants' Fire Insurance Company of Baltimore, in consideration of the sum of dollars, to the said corporation paid, the receipt whereof is hereby acknowledged, have agreed to insure, and do hereby insure against loss, or damage by fire, to the amount of In consideration, therefore, of the premises, the president and directors of the Merchants' Fire Insurance Company of Baltimore, do hereby covenant, promise, and agree, to and with the said executors, administrators, and assigns, to pay and satisfy all loss or damage, which the assured or assigns may or shall sustain by fire upon the property hereby insured, not exceeding in amount the said sum of if such loss or damage shall be sustained within the term of from . And this policy shall be deemed to expire at noon of the day of in the year of our Lord one thousand eight hundred and forty

And this corporation doth further covenant, promise, and agree, to and with the said assured executors, administrators, and assigns, that this insurance shall continue and be in force from the expiration of the time beforementioned for its duration, so long as the said assured, or

assigns, shall continue to pay the like rate of premium as hath been paid for this insurance, and so long as this corporation shall agree to accept, and actually receive the same from the assured, or assigns: Provided, that the premium for a continuance of the insurance, shall be actually paid by the assured, or assigns, to this corporation before the day limited for the termination of the risk, and such payment endorsed on this policy, or a receipt therefor given by this corporation.

And it is further agreed, that the amount of such loss, or damage, as the *the* assured, or assigns, shall be entitled to receive by virtue of this policy, shall be paid within sixty days after notice, and proof thereof, made by the assured in conformity to the conditions of this corporation, subjoined to this policy.

Provided always, nevertheless, and it is hereby declared, that this corporation shall not be liable, or bound to pay the said assured, in this policy named, executors, administrators, or assigns, for any loss or damage by fire, that may happen or take place in consequence of any invasion, civil commotion, riot, or any military or usurped power whatsoever. And provided, also, that in case the assured shall have already any other insurance made on the hereby insured premises, he shall notify the same to this corporation, before, or at the time of executing this policy, and cause the same to be endorsed thereon; otherwise this insurance shall be void and of none effect. And if the said assured, or assigns, shall hereafter make any other insurance on the hereby insured premises, he shall with all reasonable diligence notify the same to this corporation, and have the same endorsed on this policy, or otherwise acknowledged in writing by this corporation, or in default thereof this policy shall cease and be of none effect. And it is further declared and agreed, that in case of any other insurance being made upon the premises hereby insured, either prior or subsequent to the date of these presents, the assured shall not, in case of loss or damage, be entitled to demand, or recover on this policy, any greater proportion, of the loss sustained, than the amount hereby insured shall bear to the whole amount of the several insurances made, or to be made, on the premises insured by this policy. And it is further agreed and declared, to be the true intent and meaning of the parties hereto, and of these presents, that in case the above mentioned shall, at any time after the making, and during the time this policy would otherwise continue in force, be appropriated or used for the purpose of carrying on, or exercising the trade, business, or vocation of a soap boiler, tallow chandler, brewer, malster, baker, rope maker, sugar refiner, distiller, chemist, varnish maker, paper maker, stable keeper, tavern keeper, china, glass, or earthen-ware seller, oil and colour man, printer, book binder, cooper, carpenter, cabinet maker, coach maker, boat builder, ship chandler, or apothecary, or any manufactory which requires the use of fire heat, or shall be used for the purpose of storing therein gunpowder, hemp, flax, oil, pitch, tar, rosin, turpentine, spirits of turpentine, aqua fortes, straw, hay, grain unthrashed, fodder, distilled spirits, or other hazardous goods; for theatrical or other public exhibitions, or shall be undergoing repairs;

then and from thenceforth, so long as the said shall be wholly, or in part appropriated, or used for any or either of the purposes aforesaid, these presents shall cease, and be of no force or effect; unless otherwise specially agreed by this corporation, and such agreement be signified in writing.

And it is moreover declared, that this policy, or the insurance hereby intended to be made, does not comprehend or cover books of accounts, written securities, deeds or other evidences of title to lands, bills, notes, or other evidences of debt, money or bullion.

And it is agreed and understood, as well by this corporation as by the assured named in this policy, and all others who may become interested therein, that this insurance is made and accepted in reference to the conditions which accompany these presents; and in every case the said conditions are to be used to explain the rights and obligations of the parties, except so far forth as the policy itself specially declares those rights and obligations.

In witness whereof the said corporation have caused their common seal to be affixed to these presents, and the same to be signed by their president, and attested by their secretary, on this day of , in the year of our Lord one thousand eight hundred and forty

N. B. This policy is not assignable, unless by consent of the corporation, manifested in writing.

———————, *President.*

Attested: ———————, *Secretary.*

Conditions of insurance.

1. All applications for insurance must be made at the office of the company in writing.

2. In all applications for insurance of property the applicant must furnish an accurate and just description of the same, viz: Of what materials each building is constructed; whether occupied as a private dwelling or how otherwise; where situated; the name of the present occupier; how situated with respect to other buildings. And in the insurance of goods, wares, and merchandise, the place where the same are deposited is to be described; also a general description of such goods, and whether any manufactory is carried on in the premises; all which is to be certified and attested in such manner as the nature of the case may admit. And if any person or persons shall insure his or their buildings or goods, and shall cause the same to be described in the policy otherwise than they really are, so that the same may be charged at a lower premium than would otherwise be demanded, or if such description be false or fraudulent, such insurance will be void and of none effect.

3. Goods held in trust, or on commission, are to be declared as such, which may be done by inserting the words "for account of whom it may concern," otherwise the policy will not extend to cover such property.

4. Every policy of insurance made by this company shall be sealed

with its seal, signed by the president, and attested by the secretary; and the person for whose interest the insurance is made must be declared and named therein; nor can any policy, or interest therein, be assigned but by consent of the company, expressed by endorsement made thereon.

5. No insurance will be considered as made or binding until the premium be actually paid.

6. Jewels, plate, medals, or other curiosities, painting and sculpture, are not included in any insurance, unless such articles are specified in the policy.

7. It shall be the duty of all persons insured by this company, in case of fire or other danger touching the risk, to do every thing in their power for the safety and protection of the property insured; and it is mutually understood that there can be no abandonment to the insurers of the property insured. All persons insured by this company sustaining any loss or damage by fire, are forthwith to give notice to the company, and as soon thereafter as possible, to deliver in as particular an account of their loss or damage, signed by their own hands, as the nature of the case will admit, and make proof of the same, by their oath or affirmation, and by their books of accounts, and other proper vouchers, as shall be reasonably required; and shall make oath whether any and what other insurance is made on the same property; and shall procure a certificate under the hand of a magistrate or notary public, (most contiguous to the spot where the fire happened, and not concerned in such loss,) that they are acquainted with the character and circumstances of the person or persons insured, and do know, or verily believe, that he, she, or they really, and by misfortune, and without fraud or evil practice, have sustained by such fire loss or damage to the amount therein mentioned; and until such affidavits and certificates are produced the loss shall not be payable. So, also, if there appear any fraud or false swearing, the claimant shall forfeit his claim to restitution or payment by virtue of this policy.

8. In every case of loss this company will reserve to itself the right of reinstatement, in preference to the payment of claims, if it shall deem the former course to be most expedient.

9. When any mortgagee, or other person having a lien on property, either real or personal, shall insure his or her interest therein, and there shall be loss or damage by fire, it is expressly understood that whatever shall be saved or remain of such property shall be taken by the person so insured, and the value thereof deducted from such loss or damage as shall be ascertained or proved.

10. In case any difference shall arise touching any loss or damage, it may be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing shall be binding on the parties. And when any loss or damage shall happen, the company shall pay for the same within sixty days after the loss shall have been ascertained and proved.

11. Insurance may be made for seven years by paying the premium for six years; and for a less number than seven a reasonable discount will be allowed.

Payment of the premium for continuing the insurance by this policy is acknowleged to have been received as follows:

Date of receipt.	Premium received.	Sum insured.	To expire at noon.	Secretary's signature.

Policy No.
Merchants' Fire Insurance Company of Baltimore.
To
$

Premium $
Policy -

Date
For
Expires

Exhibit E, referred to in the answer.

OAKEN ROW, KING GEORGE'S COUNTY,
December 24th, 1844.

GEO. B. COALE, ESQ.,
Sec. M. F. I. Co., Baltimore.

DEAR SIR: I received yesterday a letter from Mr. Charles Tayloe informing me that, the day before, (Sunday,) the centre building of Mt. Airy, (his brother's residence, the application was forwarded some weeks ago,) was burnt, and he was obliged to go down to look after the family—Mr. Wm. Tayloe being in the South. He, Mr. Charles, refers me to his wife to attend to the insurance of his house, about which he had conversed with me a day or two ago. She has therefore signed the application. Respectfully, yours,

J. MINOR, *Agent.*

Exhibit F, referred to in the answer.

To the President of the Merchants' Fire Insurance *of* Company of Baltimore.

SIR: I gave you verbal notice last summer of the burning of my house insured through your agent, Mr. John Minor, of Fredericksburg; I now send you, by Mr. Sydnor this formal notice, with the required certificates, and remain, your obedient servant,

WM. H. TAYLOE.

MOUNT AIRY, *24th Nov.*, 1845.

I do hereby certify, that I reside near the dwelling house of Wm. H. Tayloe, esq., known as Mount Airy; that I am well acquainted with said Tayloe; that I was present at the burning of said dwelling-house, on Sunday, 22d December, 1844, and that, as soon as the wings of said building were in safety, I privily examined all the domestics of said Tayloe to ascertain, if possible, the incendiary, and that I had no doubt of the guilt of an individual, who was afterwards tried by a court of Richmond county, Va., and acquitted. The said Tayloe was, at the time of said burning, in the South; and I know, as well by circumstances as by the high character of said Tayloe, that he really, and by misfortune, and without fraud, or evil practices, has sustained by such fire loss and damage to the amount, as I would suppose to the best of my knowledge and belief, of not less than eight thousand dollars.

Given under my hand and seal, this 22d November, 1845, in the county of Richmond, and State of Virginia.

ROBT. W. CARTER, [SEAL.]
Justice of the peace for Richmond county, Va.

RICHMOND COUNTY, *to wit:*

William H. Tayloe this day personally appeared before me, and made oath that the above certificate is true, and that no insurance was upon the property above mentioned except in the Merchants' Insurance Office of Baltimore. I do further certify, that I was present at the said fire, and concur in the statement of Col. Robert W. Carter, as above made.

Given under my hand and seal, in the county of Richmond, and State of Virginia, this 25th November, 1845.

LYNE SHACKLEFORD, [SEAL.]
Justice of peace.

Exhibit G, referred to in the answer

MERCHANTS' FIRE INSURANCE CO.,
Baltimore, December 15th, 1845.

W. H. TAYLOE, ESQ.,

DEAR SIR: The Merchants' Fire Insurance Company has received your letter of 24th November, 1845, containing notice of claim for loss by fire on 22d December, 1844, and I am instructed to reply that the company declines to pay the claim as thereby made by you, and that, under the circumstances of the case, they do not waive any grounds of defence whatever, but will avail themselves of all and any that by law they may.

Very respectfully, your obed't serv't,
(Signed,) GEO. B. COALE, *Sec'y.*

Exhibit H, referred to in the answer.

To the President and Directors of the Merchants' Fire Insurance Co.

GENTLEMEN: Mr. Wm. H. Tayloe, of Va., has placed with us for collection a claim against you, resulting from the burning of his dwelling house in Richmond county, Va.; will you do me the favor to say

if this case can be adjusted amicably, or if a resort to law will be requisite for its determination.

Very respectfully,

JOHN GLENN.
For R. Johnson and self.

BALTIMORE, *January* 17*th*, 1846.

Exhibit 1, referred to in the answer.

MERCHANTS' FIRE INSURANCE CO.,
Baltimore, January 20th, 1846.

DEAR SIR: Your letter, in relation to a claim by Mr. Tayloe on this company was duly received; the payment of the claim has been declined by a letter addressed to him on December 15th, 1845, to which we respectfully refer you.

Very respectfully, your obed't serv't,
(Signed,) GEO. B. COALE, *Sect'y.*

Afterwards, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and forty-seven, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here an admission and agreement in the words and figures following, to wit:

TAYLOE
vs.
MERCHANTS' FIRE INSURANCE CO.

In the circuit court of U. S.

Admission.

It is admitted that the printed advertisement, (marked complainant's No. 1,) of John Minor, dated on the 27th July, 1842, giving notice of his agency, was published by him in a newspaper published in Fredericksburg, Virginia. It is also admitted that the letter of said Minor to Wm. H. Tayloe, the complainant, dated December 2d, 1844, (marked complainant's No. 2,) was written by said Minor, and addressed to said Tayloe, at Demopolis, Alabama, and afterwards sent from Demopolis to Macon, Alabama, at the dates of the two post marks thereon, where said Tayloe then was; and that the letter from said Minor to said Tayloe, dated 1st January, 1844, (1845,) (marked complainant's No. 3,) was written by said Minor. It is agreed that the charter of the said defendants, (act of Maryland, 1835, ch. 65, and supplements,) may be used by either party, and read from the printed laws, as if proved; and also, it is admitted that the printed blank policy, filed with the defendants' answer as an exhibit, is the form uniformly used by said defendants from its incorporation till this time, and that the exhibits G, H, and I. with defendants' answer, are admitted; and all of said above papers may be used, at the trial of the above cause, as if the same had been regularly proved by the respective parties.

JOHN GLENN,
For complainant.
JOHN J. LLOYD,
For defendants.

Complainant's No. 1, referred to in the written agreement, filed in the above cause.

Circuit court U. S., complainant's No. 1, referred to in the written agreement, filed in the above cause.

TAYLOE
vs.
MERCHANTS' FIRE INSURANCE CO.

Merchants' Fire Insurance Company, of Baltimore, incorporated in 1836, with a capital of $300,000. Office No. 18 South street, Baltimore, makes insurance on mills, manufactories, houses, barnes and contents, hay and grain in stacks, stores and goods contained therein, and all property subject to loss or damage by fire, whether situated in town or country.

ISAAC TYSON, *President.*
GEORGE B. COALE, *Secretary.*

Directors.

Wm. E. Mayhew, Charles R. Pearce, Wm. H. Beatty, Thomas R. Matthews, Wm. C. Shaw, Geo. W. Richardson, James J. Corner, John Hopkins, John Dushane.

John Minor is agent of the company, to receive applications for insurance in Fredericksburg and its vicinity.

July 27th, 1842.

Complainant's No. 2.

FREDERICKSBURG, *Dec. 2d*, 1844.

MY DEAR SIR: This day I received from the secretary of the board of the Merchants' Fire Insurance Co., of Baltimore, an answer to your application for insurance to the amount of eight thousand dollars on the Mount Airy house. Rate 0 70.

Premium on $8,000 - - -	$56
Policy - - - - -	1
(Check 21st Dec., 1844.)	$57

The Lomaxes are all well; saw Thornton yesterday, and Milly today; no news from your children since you went away. All my folk desired to be remembered to you and the Judge; and let me add my own kindest greetings to Tayloe and uxor, as the lawyers have it.

Should you desire to effect the insurance, send me your check payable to my order for $57, and the business is concluded. We have no news of interest, either public or private; no, not even a fire *for a* (save a very small one) for the last three weeks. In haste, (for it is very late at night,) farewell.

Your friend, respectfully,

J. MINOR.

WM. H. TAYLOE, Esq.

Directed to Wm. H. Tayloe, esq., Alabama. Care of J. T. Lomax, Macon P. O. Post marked Fredericksburg, Va., Dec. 3d, 1844. Demopolis, Dec. 19.

Camplainant's No. 3.

FREDERICKSBURG, *Jan.* 1*st*, 1844.

MY DEAR FRIEND: Your letter of the 21st ulto. came to hand yesterday, unhappily to late. You have, before this time perhaps, received information that the centre building of Mount Airy was burnt on Sunday week, (Dec. 22d,) and that a girl (as I learn by common rumor alone) called Lizzy, was committed on suspicion. I have written to Edward to learn something of the particulars. It is said that Mr. Robert was at home, and took the children with him to Sabine Hall. Your brothers, Edward and Charles, received information of the mischance by express on the day following, Monday 23d, and went down without delay.

Your letter is dated on the 21st, and did not reach till the 31st, yesterday, ten days; mine was dated on the 2d, and did not reach you until 20th, eighteen days. All our friends here are well.

Your friend, J. MINOR.

P. S. Louise, Hal, and Miss Key arrived in Fredericksburg this evening; they report all well below.

Agreement.

TAYLOE
vs. } In circuit, court U. S.
MERCHANTS' FIRE INSURANCE CO.

We agree that a commission shall issue to take testimony in this cause to John M. Herndon, esq., and E. Conway, esq., of Fredericksburg, Virginia, or either of them.

J. GLENN,
JNO. J. LLOYD, *For defendants.*

Afterwards, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-seven, the parties aforesaid, by their solicitors aforesaid, filed in the circuit court here a commission and depositions in the words following, to wit:

Commission.

The United States of America, district of Maryland, to wit, to John M. Herndon and E. Conway, esquire, of Fredericksburg, greeting: [SEAL.]

Be it known, that you are appointed commissioners to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, on the equity side of the said court, between William H. Tayloe, complainant, and the Merchants' Fire Insurance Company of Baltimore, defendants. Therefore you, or either of you, are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk, to attend the execution of this commission; that at such time and place as shall seem convenient to

you, or either of you, you cause to come before you, or either of you, all such evidences as shall be named or produced to you, or either of you, by either the plaintiff or defendants; and that you, or either of you, examine them upon their corporal oaths to be by you, or either of you, administered, upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you, or either of you, into writing, you send the same with this commission closed under your, or either of your, hands and seals, to the said circuit court with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-six.

Issued 3d November, 1847.

THO. SPICER, *Clerk circuit court.*

J. G—
J. J. L.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any, or either of the parties, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter before the said commission is closed, be produced to, and left with you, by either party, so help you God.

CORPORATION FREDERICKSBURG,
State of Virginia, to wit:

This day, John M. Herndon personally appeared before me, a justice of the peace for the corporation aforesaid, and took the above oath in due form.

Given under my hand, this 9th November, 1847.

B. R. WELLFORD, *J. P.*

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioners, or either of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or either of them, to take, write down, and transcribe the said depositions, or any of them, so help you God.

FREDERICKSBURG, *November 9th*, 1847.

George F. Chew, the clerk appointed by me to attend the execution of the annexed commission, this day took the above oath before me, in due form.

JOHN M. HERNDON, *Commissioner.*

In circuit court.

WILLIAM H. TAYLOE,
vs.
THE MERCHANTS' FIRE INSURANCE COMPANY OF BALTIMORE.

Plaintiff's Interrogatories.

1. Do you know the plaintiff in this cause, and how long have you known him?

2. Do you know the plantation in Virginia, called Mount Airy; if so, to whom does the same belong, and to whom did the same belong for the last five years?

3. State who was the agent for the defendants at Fredericksburg, Virginia, and look at letter A herewith filed, and say if the same be written by said agent.

4. When did complainant apply for insurance to the agent of the defendants; was such application in writing; if so, produce it, or a copy of it; state when was the application answered, and state also whether the complainant had left Virginia for the South, between the application and the answer?

5. Did or did not said Tayloe, in reply to said assent of defendants to insure his property, transmit to said Minor, the agent, a check upon a bank in Fredericksburg, for the premium demanded, and was there to the credit of said Tayloe, in said bank, at the time the same was drawn, and at the time of its receipt by said Minor, money enough in said bank to pay the same; and would it not have been paid on presentation?

6. Was or was not said property insured consumed by fire, and when, and what was its value when burned?

7. Did or did not the defendants refuse to issue a policy for such loss, and also refuse to pay the said loss; produce all the letters to said Minor declining to pay the loss, and state if they were shown to the complainant.

8. When did complainant return from the South about that time?

9. Were Robert W. Carter and Lyne Shackleford, or either of them, the magistrates or magistrate most contiguous to the house burned?

10. Do you know any thing further beneficial to complainant; if so, state it.

J. GLENN, *For Complainant.*

True copy.

THO. SPICER, *Clerk.*

Letter A, referred to in plaintiff's 3d interrogatory.

FREDERICKSBURG, VA., *November* 25, 1844.

Merchants' Fire Insurance Company of Baltimore:

The undersigned, William H. Tayloe, desires to effect insurance to the amount of eight thousand dollars on his dwelling-house of stone covered with wood: main building about ninety by sixty feet, two sto-

ries; two wings, two stories, covered with wood, about fifty by fifty feet, and connected with the main building by covered ways of stone, covered with wood.

The above named house is known by the name of Mt. Airy, and is situated in Richmond county, about two miles and a half from the court-house.

J. MINOR,
For WILLIAM H. TAYLOE.

FREDERICKSBURG, *November* 25, 1844.

GEORGE B COLE, Esqr., *Sec'y Merchants' Fire Ins. Co., Baltimore:*

DEAR SIR: This day Arthur H. H. Bernard, ex'r of Wm. Bernard, of Mansfield, dec'd, paid me fifty-seven dollars policy and premium on his dwelling-house called Mansfield, situated in the county of Spotsylvania, to the amount of eight thousand dollars, as per his application, to begin this day (25 November, 1844, and end on the 25 of November, 1845,) at noon. Please forward policy to him at this place. The mail of Friday or Saturday next will bring you my acc't for the month.

Respectfully, your obed't serv't,
J. MINOR, *Agent.*

P. S. Mr. Tayloe (not Taylor) passed through this place this morning, on his way to Alabama, and not having time to attend to his application, desired me to forward one in his name. The measures given are as nearly correct as I can remember; but as the building is worth double the amount proposed, the measures are not of much importance. I have long been familiarly acquainted with the house. One thing I should state, that it is built of red sand stone, which in my opinion will not stand fire. Mr. Tayloe's family inhabits the house, and he will return in January or February. Meanwhile, I am to communicate to him your answer.

Cross interrogatories.

In circuit court of the United States, for Maryland district.

WILLIAM H. TAYLOE
vs.
The MERCHANTS' FIRE INSURANCE COMPANY of Baltimore.

Cross interrogatories to witnesses, produced by complainant.

1st cross interrogatory. If you answer to complainant's fifth interrogatory, that complainant sent a check, as therein stated, state whether said check was paid, or presented for payment; state what was done with it; and whether said Tayloe was informed of it, and when; and also whether you did not offer to return it to him, and all that passed in relation to the same. Produce said original check, and also produce the *original letter* from said Tayloe to J. Minor in which said check was transmitted, and file both thereof with the commission to be returned with your deposition.

2d cross interrogatory. If you say that the defendants refused to issue a policy, state when they refused, and how you know of such refusal, and to whom they gave the refusal.

3d. If you say the defendants refused to pay, as asked in complainant's seventh interrogatory, state when and to whom they refused, and how you know it. Do you know that complainant ever demanded a policy, or payment of the defendants? If so, state when such demand was first made.

4th. If you say that any letters of defendants were shewn to complainant, as asked in complainant's seventh interrogatory, state when they were shewn by him.

5th. Where did Robert W. Carter and Lyne Shackleford respectively reside at the time of the fire, and for a year thereafter? How far do they respectively reside from the dwelling at Mount Airy? Was there no other magistrate or magistrates at that time living nearer to said Mount Airy than either or both of those gentlemen? If yea, state who he or they were.

6th. If there had been no fire before the receipt of said Tayloe's letter of the twenty-first of December, eighteen hundred and forty-four, enclosing the check to you, and a policy had been issued, on what day, according to the custom and practice of your agency, would the policy of insurance have borne date, or said insurance have begun? When, and as of what day would you have credited said Tayloe with the receipt of the premium of insurance?

7th. What was the extent of your authority from the defendants in the matter of this proposed insurance by said Tayloe? Did Mr. Tayloe know what your authority was?

8th. Was the whole dwelling at Mount Airy consumed by fire, or how much thereof?

9th. Do you know any thing else beneficial to defendants? If yes, state the same fully.

JOHN J. LLOYD, *for Defendants.*

True copy.

THO. SPICER, *Cl'k.*

Deposition of John T. Lomax.

In the circuit court of the United States, for the fourth circuit, in and for the Maryland district.

WILLIAM H. TAYLOE
vs.
The MERCHANTS' FIRE INSURANCE COMPANY of Baltimore.

The depositions of John Tayloe Lomax, and others, taken by me on this ninth day of November, 1847, at my office in the town of Fredericksburg, in the State of Virginia, pursuant to a commission to me directed, and hereunto annexed, to be read as evidence on behalf of the plaintiff in the foregoing suit.

The deponent, John Tayloe Lomax, being first duly sworn on the Holy Evangely of Almighty God, answereth and saith, in reply to the interrogatories propounded to him by the plaintiff's counsel, as follows, viz:

To the first interrogatory, he answereth and saith: That he has known him from his childhood—he supposes for at least forty six or seven years

To the second interrogatory he answers, that he has known the plantation called Mount Airy from early infancy. He has known it well for some fifty-four or five years, the same having been the residence of his grandfather, and afterwards of his grandmother, on whose death it became the property of their son, the late Col. John Tayloe, who died in Washington in February, 1828; and he, by his will, which I wrote, devised the same to his son William H. Tayloe, the plaintiff, who has ever since held the same as his property, during the whole period from his father's death in 1828.

To the third interrogatory he answers, that he had no knowle lge who was the agent of the defendants at Fredericksburg, Virginia, further than that he recollects to have seen advertisements for insurance in one of the Fredericksburg papers, which purported to be published by Mr. John Minor, as their agent, or in their behalf. He is not sufficiently acquainted with the handwriting of the letter annexed to the interrogatory, marked A, to pronounce positively by whom it is written. It resembles much his general recollection of the handwriting of Mr. John Minor, though his recollection of his handwriting is not very distinct.

To the fourth interrogatory he answers, that he has no knowledge when the complainant did apply for insurance to the agent of the defendants, or whether such application was in writing, nor when the application, if made, was answered. The complainant and himself (the deponent) left Fredericksburg together, in the cars, on Monday, the 25th day of November, 1844, (the twenty-fifth day of November, one thousand eight hundred and forty-four,) he, the deponent, for the town of Demopolis, and he, the complainant, for the neighborhood of Macon, about ten miles from Demopolis, in Alabama. They arrived at Greensborough, in Alabama, on Sunday morning, and remained there until Monday morning, the second of December, 1844, and left there together, and parted on the same day at Macon, he, the deponent, to proceed to Demopolis, and the complainant to his brother Henry's, about two miles from Macon. He knows that the complainant had left Virginia on the twenty fifth day of November, and that he parted from him on the eleventh day of February following at Mobile; and, during all that time, he occasionally saw the complainant in Marengo county, and elsewhere in Alabama; and he is certain that he continued in the South until after the eleventh day of February. They left Demopolis together, in the steamboat from Demopolis, on the seventh day of February, and arrived at Mobile on Sunday morning, the ninth of the same month, where hey remained together until the eleventh. Sundry bills of his ex-

penses, now before him, enable him to remember these dates with certainty.

In answer to the fifth interrogatory he says, that he has no knowledge of the complainant's "transmitting to Mr. Minor, the agent, a check upon a bank in Fredericksburg for the premium demanded," nor does he know that there was any money in such bank, to the credit of the complainant, to meet such check; that some time in the summer or fall of 1845, Mr. Minor, at this deponent's house in Fredericksburg, offered to return to the complainant a check which he understood had been drawn by the complainant in favor of Mr. Minor, upon the Virginia Bank at Fredericksburg, some time the preceding winter, for premium of insurance of Mount Airy, which the complainant, he thinks, by his advice, declined receiving from Mr. Minor. At that time, he, deponent, understood that the complainant had determined to sue for the insurance of Mount Airy, if, indeed, the suit had not been already brought. That this is all the knowledge he has of the check alluded to. He thinks Mr Minor had the paper in his hand upon the occasion he has alluded to, at his house, and was exhibiting it there.

To the sixth interrogatory he answers, that he found the centre building of Mount Airy house, all except the walls, consumed by fire, when he visited that place, on his way to Lancaster circuit court, on or about the twenty-eighth day of March, 1845 As to the value of the property which the fire consumed about the building, he is very incompetent to say; that the interior works of the building which were consumed he should suppose were costly. They were in a style of considerable magnificence. He should not think they could be replaced, in their former style, for less than seven or eight thousand dollars. This, however, is a very unsatisfactory estimate of his own. That the walls themselves appear to have been much injured by the fire.

To the seventh interrogatory he answers, that he knows of no refusal of the defendants to issue a policy for the loss alluded to, nor of any letters to Mr. Minor declining to pay the loss, nor whether such letters were shewn to the complainant.

To the eighth interrogatory he answers, that he is pretty certain that the complainant did not return to Mount Airy or to his home from the South until the latter part of April, 1845. He, the deponent, was frequently at Mount Airy during the intervals between Lancaster, Northumberland, and Richmond circuit courts in April, 1845; he stayed at Mount Airy during Richmond court, which sat on the eighth of April, and continued there until Westmoreland court, which sat on the fourteenth of April; that, during all that time, the complainant had not returned home from the South, and they were in daily expectation of his arrival; that after Westmoreland court, the term of which commenced on the fourteenth of April, and after finishing the business of that court, (he is the judge of the fifth judicial circuit,) he was returning home, and about nine miles from Westmoreland courthouse he met the complainant in the road. He was then returning from the visit which he had made, as mentioned before, to the South, and was on his way to Mount Airy. He should say that that was on

the seventeenth or eighteenth of April, 1845; and he has the strongest reasons for saying that the complainant had been absent from Virginia from the time they left on the twenty-fifth of November, 1844, till about the time, or a few days before the time, that they met again in the road in Westmoreland.

To the ninth interrogatory he answers, that he believes that Robert W. Carter and Lyne Shackelford are magistrates in the county of Richmond, having seen their names mentioned in judicial records as magistrates of Richmond county; that they both reside not more than two miles from Mount Airy, and he is certain that there is no magistrate residing within a less distance.

To the tenth interrogatory he answers, that he would further state, that about the middle of December, whilst he was at Demopolis, Alabama, a letter arrived at that office directed to the complainant; that he is not certain, but has some idea, that the letter was directed "to the care of John Tayloe Lomax," which name would answer either for himself or his son, a resident of Demopolis, whom he was then visiting; that the letter was detained some days by his son and himself, in hopes of meeting with a conveyance to the complainant, or in the expectation that the complainant would, as he had promised him when they parted at Macon, visit them at Demopolis; that being disappointed, however, in meeting any one going to the neighborhood where the complainant was, (it was a period when there was constant daily communication between that neighborhood and Demopolis, where the cotton planters of that part of Marengo were sending their cotton to be stored for shipment,) and disappointed in our expectations of seeing the complainant at Demopolis as soon as he had promised, the letter was again (he thinks at his suggestion) put into the post office at Demopolis by his son, directed to Macon, (or Prariville as it is sometimes called,) which was the nearest post office to the place where the complainant was staying; that his knowledge of Mr. Minor's handwriting is not sufficiently distinct to enable him to say, or now to remember, whether the superscription was in Mr. Minor's handwriting; nor does he know what were the contents of the letter, further than he afterwards was informed by the perusal of a letter which the complainant showed him, and which he represented to be the same letter that he has alluded to; that, according to his recollection of the time when the letter arrived at Demopolis, and the time that it was again put into the office, he does not think the complainant could have received it earlier than the nineteenth or twentieth of December.

Cross examination.

To the first cross interrogatory he answers, that he has no knowledge of the check alluded to, further than he has already stated above; nor of its payment, or its being presented for payment, nor of what was done with the check, nor what information the complainant received about the check, further than as aforesaid.

To the second cross interrogatory he answers, that he knows nothing about the refusal to issue the policy alluded to, nor can he state any

thing in answer to the third cross interrogatory, nor in answer to the fourth interrogatory.

In answer to the fifth cross interrogatory he answers. that he knows that Robert W. Carter resided at his house, called Sabine Hall, about two miles or less from Mount Airy, at the time when it is said the burning of Mount Airy happened, and that he resided there for many years before that event, and has always since resided there; that he has understood that Lyne Shackelford resided, and has continued to reside, at Richmond court house, at the time of the fire, and since, and that he so believes; that they were the nearest resident magistrates, and still are, to Mount Airy.

The deponent states that he is unable to answer as to the matters propounded in the sixth cross interrogatory, nor in the seventh cross interrogatory.

To the eighth cross interrogatory he answers, that he would say that the fire alluded to consumed the whole interior of the centre building of Mount Airy, a part of the wings of the covert ways to the other buildings was injured, by tearing off the roofs, as it would serve to prevent the spreading of the conflagration to the destruction of the other buildings.

The deponent states that he has no knowledge of any thing beneficial to the defendants, other than what may be so regarded in what he has already stated.

JOHN TAYLOE LOMAX.

Attest: GEORGE F. CHEW, *Clerk*.

Deposition of John Minor.

The deposition of John Minor, taken at the same time and place with the foregoing deposition of John Tayloe Lomax.

The deponent being first duly sworn on the Holy Evangely of Almighty God, answereth and saith, in reply to the interrogatories propounded by the plaintiff's counsel, as follows, viz:

To the first interrogatory he answereth and saith, that he knows the plaintiff, and has known him more than twenty years.

To the second interrogatory he answereth and saith, that he does know the plantation called "Mount Airy," and that the plaintiff has been in possession of it more than five years last past, and that he verily believes that it belongs to the plaintiff.

To the third interrogatory he answereth and saith, that he, deponent, was agent of the "Merchants' Fire Insurance Company of Baltimore," at Fredericksburg, Virginia; and that the letter referred to by the letter A, and appended to the commission and written interrogatories hereunto annexed, was written by him, the deponent, then and there agent as aforesaid.

To the fourth interrogatory he answereth and saith, that the plaintiff had an interview with him, the deponent, agent as aforesaid, a very short time anterior to the twenty-fifth day of November, eighteen hundred and forty-four, and that he, the plaintiff, being in the hurry of pre-

paration for a journey to Alabama, did authorize and request him, the deponent, to apply to the board of directors of the Merchants' Fire Insurance Company of Baltimore, to effect insurance to the amount of eight thousand dollars on his, the plaintiff's, dwelling house, called "Mount Airy," and that in consequence thereof the letter marked A was written; that the interview last above referred to between the plaintiff and himself, the deponent, took place in the street, and the authority and request were communicated orally, and not in writing; that the application so made was per letter A. That on the second day of December, eighteen hundred and forty-four, he, the deponent, received an answer from the secretary of the board, stating the conditions on which an insurance might be effected, and that he, the deponent, wrote immediately to the plaintiff, informing him as to those conditions; that between the time of the interview above mentioned, and the date of the letter last received, the plaintiff had set out for Alabama, leaving his address with him, the deponent; that he forgot the address, and directed his letter to the plaintiff to Demopolis, as he believes.

To the fifth interrogatory he answereth and saith, that on the thirty-first day of December, eighteen hundred and forty-four, he received by mail a letter from the plaintiff, enclosing a check on the Bank of Virginia, at Fredericksburg, for fifty-seven dollars, which he, the plaintiff, directed to be applied to the payment of the insurance on "Mount Airy," that sum being the amount demanded for policy and premium. That he does not know whether the plaintiff had or had not money enough standing to his credit in said bank to pay and satisfy the said check, the same never having been presented, as the property on which the insurance was to have been effected was destroyed before the check came to hand, that is to say, on or about the twenty-second day of December, 1844, as he, the deponent has been informed and believes.

To the sixth interrogatory he answereth and saith, that it was currently reported and generally believed, that the property mentioned in said interrogatory had been consumed by fire, and that, judging from the appearance of the ruins, he, the deponent, believes it to have been so consumed about the 22d day of December, 1844, as before stated in reply to the fifth interrogatory; that he, the deponent, does not think himself qualified to decide on the value of the property, but from its size and finish inside and outside, the unusual thickness of the walls, &c., the main building could not have been worth less than fifteen thousand dollars.

To the seventh interrogatory he answereth and saith, that soon after the receipt of the plaintiff's letter, containing the check herein before mentioned, that is, soon after the 31st day of December, 1844, he, the deponent, wrote to the plaintiff, informing him that his check had been received, but too late, as the house being destroyed there was nothing to be insured; of this the defendants were informed by a letter from him, the deponent, to the secretary of the board; that he, the deponent, knows of no letters from the defendants refusing to pay the damage, except so far as might be inferred from the general tenor of the

correspondence on this subject, which referred to the claim as unjust; that he, the deponent, did not, of course, order a policy.

To the eighth interrogatory he answereth and saith, that he does not know when the plaintiff returned from the South.

To the ninth interrogatory he answereth and saith, that he does not know "whether Robert W. Carter and Lyne Shackleford, or either of them, were the magistrates most contiguous to the house."

To the tenth interrogatory he answereth and saith, that he knows nothing more beneficial to the plaintiff, unless it be that he, the plaintiff, has always borne a high character; and that he, the deponent, being at Cleve, in the county of King George, about Christmas, in the year 1844, received notice by express from Edward T. Tayloe, and also by express from Charles Tayloe, that the "Mount Airy" house was burnt; that he states this last fact for as much as it is worth.

Cross examination of J. Minor.

To the first cross interrogatory he answers and says, that the plaintiff's check was neither paid nor presented for payment, but was retained by him, the deponent, subject to the order of the plaintiff, the words "this check is not to be presented" being written by him, the deponent across the face; of all which the plaintiff was duly advised, as he, the deponent thinks, by a letter from him, written immediately after the receipt of the check, for the premium and policy of fifty-seven dollars; when the plaintiff returned to Virginia, he, the deponent, told him that he was ready to return the check, and did tender the same, but at what time he does not now remember; but, be that however as it may, when it was tendered, the plaintiff looked at it, and spoke to the following effect, "as you have cancelled the check, you may keep it;" he, the deponent, did keep it, always however subject to the plaintiff's authority, and it is now filed with this deposition, as is the letter by which it was accompanied, and which bears date "Macon, Marengo county, Alabama, 21st December, 1844, and signed William H. Tayloe."

To the second cross interrogatory he answers and says, that he knows nothing more in relation to this matter than is set forth in his reply to the seventh interrogatory.

To the third cross interrogatory he answers and says, that he refers (for the answer to the former part of this interrogatory) to his reply to the seventh interrogatory; and for the latter part of it he saith, that the plaintiff may be considered to have made a demand for a policy, when he wrote the letter hereunto appended, and dated at "Macon, Marengo county, Alabama, 21st December, 1844."

To the fourth cross interrogatory he answers and says, that he knows nothing more in regard to this matter than what has been given in his reply to the seventh interrogatory.

To the fifth cross interrogatory he answers and says, that he is not able to give any information.

To the sixth cross interrogatory he answers and says, that had there

been no fire before the receipt of the plaintiff's letter of the 21st December, 1844, enclosing the check, the insurance would have [begun] on the day on which the payment was made, that is, the day (in ordinary cases) on which the check was paid; but in this case, the day on which the check came to hand, as he, the deponent, was willing to cash the plaintiff's check. The policy would have borne date on the day of its execution, but the insurance would have begun, as before stated, not when the check was dated, or was mailed, but when the entry was made in his, the deponent's, books.

To the seventh cross interrogatory he answers and says, that "the extent of his authority from the defendants, in the matter of this proposed insurance," was to transmit to the plaintiff the terms offered by the defendants, and to receive of the plaintiff the amount of the premium and policy, and to communicate information thereof to the defendants. That he, the deponent, had all authority, not confined to this case, but in cases generally, to solicit from individuals the effecting of insurances in the company of the defendants; to communicate applications to the defendants; to ascertain from the company upon what terms the insurance could be effected, and to give the answers of the company to the individuals applying; to receive in behalf of the company the notification of the acceptance by the applicants of the terms of the insurance; to receive the premiums that had been stipulated for by the company; and to give the insured acquittances for the same, and to be instrumental in procuring policies of insurance to be forwarded by the company to the insured. That in some cases, (plain ones and of haste, where the exigency did not admit of delay enough to communicate with the board of directors,) he, the deponent, was authorized to take the risk, and contract for the insurance; but that the present case of the plaintiff's insurance was not looked upon as a case of that kind, and accordingly he, the deponent, communicated with the company; and that he, the deponent, does not know whether the plaintiff was particularly informed as to his, the deponent's, authority, but supposes he saw the public notices of the agency.

To the eighth cross interrogatory he answers and says, that all the combustible parts of the main building at Mount Airy were destroyed (as he, the deponent, believes from the appearance of the ruins) by fire.

To the ninth cross interrogatory he answers and says, that in all his intercourse with the defendants, he has ever found them frank, fair, and open in their dealings.

J. MINOR.

Attest: GEORGE F. CHEW, *Clerk.*

Check.

MARENGO COUNTY, ALA.,
21*st Dec.*, 1844.

$57. Bank of Virginia, Fred'g, pay John Minor, esq., or order, fifty-seven dollars, premium of insurance on Mt. Airy house.

WM. H. TAYLOR.

[Written across the face]—This check not to be presented.

The foregoing is the check referred [to] in the annexed deposition of John Minor.

JOHN M. HERNDON, *Commissioner.*

Teste:

GEORGE F. CHEW, *Clerk.*

Letter from Wm. H. Tayloe to J. Minor, inclosing a check for $57, for premium and policy.

MACON, MARENGO COUNTY, ALA.,
21*st Dec.*, 1844.

DEAR MINOR: Yours of the 2d came to hand yesterday, and I send you my check for fifty-seven dollars, as the premium of insurance on the Mount Airy house. You will please deposit the policy in the Bank of Va., in your town, where Mr. Roberts holds some papers of mine, for safe-keeping. Say to the Lomaxs, the Judge and son are visiting us; they are well and return your compliments, and thanks for your kind expressions and remembrances. *Cotton* is all the talk here, and nothing old is to be found for your P. F.

I have letters from Louisa, &c. Our regards to your good people and friends.

Yours, with regard,
WM. H. TAYLOE.

The foregoing is the letter referred to in the foregoing deposition of John Minor.

JOHN M. HERNDON, *Commissioner.*

Teste:

GEORGE F. CHEW, *Clerk.*

Deposition of John W. Collins.

The deposition of John W. Collins, taken at the same time and place with the foregoing depositions of John Taylor Lomax, and John Minor.

The deponent being first duly sworn on the Holy Evangely of Almighty God, answereth and saith, in reply to the interrogatories propounded by the plaintiff's counsel, as follows, viz.:

To the first interrogatory he answers and says, that he does know the plaintiff in this cause, and has known him for twelve years past.

To the second interrogatory he answers and says, that he knows the plantation in Virginia called Mount Airy, that the said plantation belongs to the plaintiff, William H. Tayloe, and has belonged to him for more than five years past.

To the third, fourth, and fifth interrogatories he answers and says, that he knows nothing.

To the sixth interrogatory he answers and says, that the dwelling house of the plaintiff at Mount Airy was consumed by fire on the 22d day of December, 1844; that he does not know what was the value of the said house at the time it was burnt, but he is sure that it could not be replaced for ten thousand dollars.

To the seventh interrogatory he answers and says, that he knows nothing.

To the eighth interrogatory he answers and says, that in the spring of 1845, he thinks in the month of April, the plaintiff returned from the South.

To the ninth interrogatory he answers and say, that Robert W. Carter and Lynn Shackleford were the magistrates most contiguous to the house burned.

To the tenth interrogatory he answers and says, that he does not know any thing further, beneficial to the plaintiff.

Cross examination of J. W. Collins.

To the fifth cross interrogatory he answers and says, that Robert W. Carter and Lynn Shackleford each resided in Richmond county, in the State of Virginia, about two miles from Mount Airy, at the time of the fire, and have resided at the same place ever since; that there was no other magistrate living nearer to Mount Airy at the time of the fire.

To the eighth cross interrogatory he answers and says, that the whole of the dwelling-house at Mount Airy was not consumed, only the centre building was consumed, and a part of the covered way on each side of the building was pulled down while the fire was raging.

To the first, second, third, fourth, and seventh cross interrogatories he answers and says, that he knows nothing.

JNO. W. COLLINS.

Attest: GEORGE F. CHEW, *Clerk*.

Deposition of Wm. J. Roberts.

The deposition of William J. Roberts, taken at the same time and place with the foregoing depositions of John Tayloe Lomax, John Minor, and John W. Collins.

The deponent being first duly sworn on the Holy Evangely of Almighty God, answereth and saith, in reply to the interrogatories propounded by the plaintiffs' counsel as follows, viz:

To the first interrogatory he answers and says, that he knows the plaintiff, and has known him for twenty or thirty years.

To the second interrogatory he answers and says, that he knows nothing.

To the third and fourth interrogatory he answers and says, that he knows nothing.

To the fifth interrogatory he answers and say, that he knows nothing of the application of the plaintiff to insure his property, or of the transmission of the check referred to in the said interrogatory; that he, the deponent, is the cashier of the office of discount and deposite of the Bank of Virginia, at Fredericksburg; that he finds by reference to the books of the said bank, that the plaintiff had to his credit, in the said bank, on the twenty-first day of December, eighteen hundred and forty-four, more than one thousand dollars; and that he had the same amount to his credit on the thirty-first day of December, eighteen hundred and

forty-four; and the deponent further states, that the said plaintiff's check for fifty-seven dollars would have been paid upon presentation at the said bank, either at the time it was drawn or at any subsequent time.

To the sixth, seventh, eighth, ninth, and tenth interrogatories he answers and says, that he knows nothing.

To the cross interrogatories he answers and says, that he knows nothing, except so far as is stated in his answer to the fifth interrogatory propounded by the plaintiff.

WM. J. ROBERTS.

Attest: GEORGE. F. CHEW, *Clerk.*

STATE OF VIRGINIA,
Corporation of Fredericksburg, sst:

I, John M. Herndon, acting as commissioner by virtue of a commission directed to me and E. Conway, esq., or either of us, from the circuit court of the United States for the fourth circuit, in and for the Maryland district, on the equity side of the court, in a cause therein depending, between William H. Tayloe, plaintiff, and the Merchants' Fire Insurance Company of Baltimore, defendants, having first taken the oath hereunto annexed, and also administered the annexed oath to George F. Chew, who was appointed by me as clerk to attend the execution of the said commission, proceeded on the 9th day of November, 1847, at my office in the town of Fredericksburg, to take the depositions of John Tayloe Lomax, John Minor, John W. Collins, and William J. Roberts, witnesses produced by the plaintiff in the said cause; the said witnesses having first been duly sworn upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that might relate to the cause aforesaid, and true answers make to the several interrogatories and cross interrogatories propounded to them by the counsel for the plaintiff and defendant respectively, and having reduced the depositions so taken by me to writing, I now send the same, with the said commission, to the said circuit court.

Given under my hand and seal this 9th day of November, 1847.

JOHN M. HERNDON, *Comm'r.* [SEAL.]

And now, here, at this day, to wit, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-seven, the circuit court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States.

WILLIAM H. TAYLOE
vs.
THE MERCHANTS' FIRE Insurance Company.

This case being ready for hearing, and the same being submitted to the court. It is thereupon, this 29th day of November, 1847, adjudg-

ed, ordered, and decreed by the court, that the bill of the complainant be, and the same is hereby, dismissed with costs.

R. B. TANEY,
U. S. HEATH.

The above decree is entered pro forma under the agreement of the parties.

Appeal in open court.

From which said decree, so as aforesaid rendered, the said William H. Tayloe, by his solicitors aforesaid, *in open court*, hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; and to him it is granted.

Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court; and the same are hereby transmitted accordingly.

Appeal bond.

Know all men by these presents, that we, William H. Tayloe, of Richmond county, Virginia, and John Glenn, of the city of Baltimore, and State of Maryland, are held and firmly bound unto the Merchants' Fire Insurance Company of Baltimore in the just and full sum of five hundred dollars, current money of the United States, to be paid to the said Merchants' Fire Insurance Company of Baltimore, their certain attorney, successors, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this fourth day of December, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas, heretofore, to wit, on the second day of April, in the year of our Lord one thousand eight hundred and forty-six, the said William H. Tayloe, a citizen of the State of Virginia, filed his bill of complaint against the said Merchants' Fire Insurance Company of Baltimore, a body corporate, chartered by the State of Maryland, and whose stockholders are citizens of the State of Maryland, in the circuit court of the United States, for the fourth circuit, in and for the Maryland district, on the equity side of the said court.

And whereas, also, at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-seven, by the decree of the same court the said bill was dismissed with costs, from which said decree, so as aforesaid rendered, the said William H. Tayloe hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December, in the year of our Lord one thousand eight hundred and forty-seven.

Now, the condition of the above obligation is such, that if the said

William H. Tayloe shall well and truly prosecute his said appeal with effect, and pay unto the said Merchants' Fire Insurance Company of Baltimore, their certain attorney, successors, or assigns, all such damages, costs, and charges as may be awarded by the said Supreme Court, in case he shall fail to make good his said appeal, then the above obligation to be void and of none effect; otherwise, to be and remain in full force and virtue.

WM. H. TAYLOE, [SEAL.]
JOHN GLENN. [SEAL.]

Signed, sealed, and delivered in presence of—
S. TEACKLE WALLIS.

Approved this sixth day December, 1847. U. S. HEATH.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court, the [SEAL.] sixth day of December, in the year of our Lord one thousand eight hundred and forty-seven.

THO. SPICER, *Cl'k circuit court*.

Filed 13th Dec'r, 1847.